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1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 Case Nos. 08-13555 (JMP) ; 08-01420 (JMP) (SIPA)

4 - x

5 In the Matter of:

6

7 LEHMAN BROTHERS HOLDINGS, INC., et al.

8 Debtors.

9 - x

10 In the Matter of:

11

12 LEHMAN BROTHERS, INC.

13 Debtor.

14 - x

15 United States Bankruptcy Court

16 One Bowling Green

17 New York, New York

18

19 October 18, 2010

20 2:04 PM

21

22 B E F O R E :

23 HON. JAMES M. PECK

24 U.S. BANKRUPTCY JUDGE

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2 HEARING re 60(b) Motions.

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1 P R O C E E D I N G S

2 THE COURT: Be seated, please. Good afternoon.

3 MR. SCHILLER: Good afternoon, Your Honor.

4 THE COURT: So what's happening?

5 MR. SCHILLER: The parties have resolved most of the  
6 issues between them with respect to disputes over deposition  
7 designations or exhibits we want admitted into evidence. There  
8 are a few exhibits that remain to be discussed with Your Honor,  
9 literally a few.

10 In addition to that, I would like to have a brief  
11 bench conference or chambers conference to just address one  
12 issue that came up in our last chambers conference, five  
13 minutes on a contested issue, just something to raise with Your  
14 Honor.

15 THE COURT: Okay.

16 MR. HUME: Good afternoon, Your Honor. For the  
17 record, Hamish Hume with Boies Schiller for Barclays.

18 As Mr. Schiller said, we have indeed resolved  
19 virtually all of our admissibility issues, and we have two  
20 different stipulations to hand up. I think I'm right in saying  
21 the reason there are two is simply a matter of chronology,  
22 although I think one of them deals mostly with things admitted  
23 for limited purposes.

24 And so I think the proposal is that we hand in the  
25 stipulation that resolves our problems -- it's been signed --

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1 and that we hope to have, as a matter of good order and  
2 process, a single stipulation put together on all exhibits that  
3 we will provide the Court along with DBD with all exhibits that  
4 have been admitted --

5 THE COURT: Okay. Fine.

6 MR. HUME: -- once we're able to do so.

7 THE COURT: That'll be a cumulative review of  
8 everything that has been admitted?

9 MR. HUME: Exactly.

10 THE COURT: Either by stipulation or by order?

11 MR. HUME: Exactly.

12 THE COURT: Okay.

13 MR. HUME: So may I hand these up to the Court?

14 THE COURT: You may. Okay, thank you.

15 MR. HUME: We've also reached agreement on how to  
16 approach designated deposition testimony and objections to that  
17 testimony. The agreement is, no more objections are going to  
18 be pressed on any deposition testimony from either side. That  
19 is, I think, without prejudice to either side arguing for  
20 specific testimony, what weight it should be given based on  
21 lack of personal knowledge or foundation. But it's all  
22 admitted.

23 THE COURT: All right.

24 MR. HUME: I think that brings me -- subject to any  
25 comments from the movants, to the three categories of documents

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1 not yet admitted that we'd wish to move into -- offer into  
2 evidence. The first of which -- I say three categories.  
3 There's an JPM -- a JPMorgan e-mail relating to the Gifford  
4 Fong valuation of Pine. Secondly, there are a few exhibits --  
5 two exhibits to a deposition that we wish to move into evidence  
6 that have not yet been moved in. And third, there are certain  
7 excerpts from the examiner's report that we believe should be  
8 moved into evidence, either for all purposes or at least for a  
9 limited purpose of showing what the examiner reported. And  
10 that's subject to any counter-argument from movants or request  
11 for completeness from them.

12 Before I go to those three categories, I guess I  
13 should also note, when we were last before you, Your Honor,  
14 counsel for the trustee asked if Barclays would be willing to  
15 produce GFS data for earlier dates, September 11th and earlier  
16 days in the preceding week. We had initially said we thought  
17 that request was out of time, too late, which it was. But we  
18 did go and get it and we have produced the summaries for that  
19 data.

20 The request was literally for the summaries and an  
21 exhibit showing September 11th. I think we copied the Court on  
22 a letter providing --

23 THE COURT: I saw that last evening.

24 MR. HUME: -- okay. If the movants want the  
25 underlying data, which I think they may, we'll be providing

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1 that to them later today. And if the movants want to move that  
2 into evidence, we're certainly happy for that to come into  
3 evidence.

4 So with those overview points, I think we can go to  
5 the first document, which is --

6 THE COURT: Do you wish to be heard, ma'am?

7 MS. SCHAFER: Yes, just one comment. Tracy Schaffer  
8 from Jones Day for LBHI.

9 I can actually cut out one of the four arguments  
10 you're going to make on the two deposition exhibits which we  
11 just learned about two hours ago that they want to move in.  
12 LBHI has no objection.

13 MR. HUME: Thank you.

14 THE COURT: Anybody else?

15 UNIDENTIFIED SPEAKER: No objection from the  
16 committee, Your Honor.

17 THE COURT: Okay. So they're admitted.

18 (Deposition exhibit was hereby received in evidence as BCI's  
19 Exhibit BCI-1106, as of this date.)

20 (Deposition exhibit was hereby received in evidence as BCI's  
21 Exhibit BCI-1107, as of this date.)

22 MR. HUME: And that's BCI Exhibit 1106 and 1107.  
23 We'll provide copies to the Court shortly. Thank you.

24 THE COURT: Just so I know what we're talking about,  
25 what are those exhibits?

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1 MR. HUME: Your Honor, we have copies -- do these  
2 binders have all the documents that we're talking about?

3 UNIDENTIFIED SPEAKER: They do have all the documents  
4 we're talking about.

5 MR. HUME: May we hand this out, Your Honor?

6 THE COURT: Yes.

7 MR. HUME: So, Your Honor, we're talking about the  
8 documents at tab 11 and 12 of the binder. Tab 11 is a  
9 correspondence from counsel for the movants from Jones Day to  
10 me, requesting GFS data in August of '09 during the 2004  
11 discovery and providing the report path that they wanted us to  
12 use to gather that data. And at tab 12 -- and that's BCI  
13 Exhibit 1106 -- tab 12 is BCI Exhibit 1107, which is an e-mail  
14 recounting the request for a live environment by Alvarez &  
15 Marsal to look at and make adjustments to GFS data for  
16 September 12, 2008.

17 THE COURT: All right.

18 MR. HUME: And they were both used in the Uma Krishnan  
19 deposition.

20 So with that, we can move to a document that we had a  
21 brief argument over, Your Honor, during I believe Professor  
22 Pfleiderer's examination, but it may have been on cross  
23 examination of movants' expert, Mark Slattery, BCI Exhibit  
24 1005, which is also in the binder, but we can bring it up. And  
25 Your Honor may recall, this is -- if we could just blow up the

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1 e-mail header -- this is an internal e-mail at JPMorgan  
2 produced by JPMorgan in this case pursuant to the subpoena,  
3 that reports on the analysis of Lehman's collateral that  
4 JPMorgan was holding as collateral for its lending facilities  
5 to Lehman, and reporting that Gifford Fong -- it reported  
6 specifically on the valuation from Gifford Fong.

7 And I think there's evidence in the record that's not  
8 disputed, Gifford Fong was a independent valuation consultant  
9 who was hired by JPMorgan to perform these valuations. And  
10 this e-mail memo simply reports, "Here is the analysis by  
11 Gifford Fong, the executive summaries at Gifford Fong has the  
12 three CDOs as 1.5 billion dollars lower than Lehman has it."  
13 This is dated September 4, 2008, an e-mail memo within the  
14 JPMorgan -- the subject header is "Gifford Fong pricing for  
15 Lehman excess."

16 And attached to this e-mail is the spreadsheet with  
17 the three CDOs valued by Gifford Fong as compared to their par  
18 values. So you have the CUSIPs there in column C, the total  
19 position, the debt position, the market value. And then the  
20 next page of the spreadsheet -- can we go to the next page --  
21 gives the Gifford Fong price, both in percentage terms and then  
22 Gifford Fong collateral value. And there in the first row of  
23 three, 515 million is the valuation for Pine.

24 Now, we submit that this should be accepted into  
25 evidence for all purposes as a business record of JPMorgan

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1 and/or in the alternative, as a party admission by an agent of  
2 Lehman in its efforts to value the collateral Lehman had  
3 provided to JPMorgan. On the business record front, there's  
4 well-established case law in the Southern District that  
5 internal e-mails reporting on business activity are business  
6 records. There are many such e-mails admitted in this case  
7 already. And this information attached to the e-mail is  
8 summarized in the e-mail. So I don't think there's any  
9 analytical difference between the information attached to the  
10 e-mail and the information in the e-mail.

11 The e-mail says these three CDO's are valued by  
12 Gifford Fong at 1.5 billion less than Lehman, and this simply  
13 shows the breakdown. The e-mail itself could just have easily  
14 have written this information. It would have been exactly the  
15 same analysis from a hearsay or business records perspective.

16 To the extent there is an argument that the Gifford  
17 Fong valuation is embedded hearsay, we would argue that it is,  
18 again, information that comes to JPMorgan in the form of a  
19 business record. It's Gifford Fong's valuation, and as the  
20 actions of an agent, Lehman's agent, performing a valuation of  
21 that collateral. So again, we think under both party admission  
22 rule and the business records rule, it comes in for all  
23 purposes.

24 Now, we of course have the alternative or fallback  
25 position that this should come in at least for a limited

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1 purpose. And the limited purpose -- there could be a couple of  
2 limited purposes that it would come at. I think the most  
3 important one is this should at least come in for the limited  
4 purpose of showing that for an asset like Pine, and  
5 particularly for Pine, which has been discussed in this case,  
6 there were ranges of valuations provided in September 2008,  
7 given how illiquid it was and given how complex its structure  
8 was.

9 So even if it does not come in for the truth of the  
10 assertion that Pine was worth 515 million on September 4th, it  
11 should at least come in for the limited purpose of showing that  
12 JPMorgan received a valuation from Gifford Fong at 515 million.  
13 That is at least evidence that there were range of different  
14 values provided for that illiquid asset.

15 That's our argument on this e-mail. And it may be  
16 preferable for the Court if we argue this one at a time, so you  
17 can hear from movants' counsel now.

18 THE COURT: Yes, let's do it one at a time. Thank  
19 you.

20 MS. SCHAFER: Good afternoon, Your Honor. Tracy  
21 Schaffer from Jones Day for LBHI, for the record.

22 Movants believe that Exhibit 1005 should not be  
23 admitted; that it's being admitted for the truth of the matter;  
24 and that it's hearsay. And then there's also an authentication  
25 objection as well. My partner, Mr. Tambe, raised the objection

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1 in court last week when the exhibit was used. He raised a  
2 hearsay objection. And as Your Honor noted, we don't really  
3 know what that attachment is and what it exactly purports to  
4 be. And there hasn't been any testimony on the document or any  
5 showing of what this third-party document is. So we maintain  
6 our objection to it.

7 THE COURT: Okay.

8 MS. SCHAFFER: We don't think Barclays has made a  
9 sufficient showing under the business records exception.

10 THE COURT: Well, I'm going to admit the document for  
11 the limited purposes described by Mr. Hume in his argument. I  
12 think that there are reasonable questions as to whether or not  
13 Gifford Fong is an agent of Lehman for purposes of admission,  
14 since there's nothing in the record that I'm aware of that  
15 demonstrates that agency relationship.

16 Additionally, for the reasons that I mentioned when  
17 this came up the first time, it's unclear that the schedule  
18 attached constitutes a business record, although I have no  
19 doubt that the e-mail itself, which is internal to JPMorgan  
20 Chase is a business record of JPMorgan Chase and that it has  
21 been used to distribute internally the Excel spreadsheet.

22 To the extent that the information being distributed  
23 represents an indication of value as to the CUSIPs listed  
24 there, I'm not accepting it for the truth of the market values  
25 as listed. But I am accepting it as an indication of what at

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1       least JPMorgan was sharing internally. And I believe that it  
2       does demonstrate something of relevance as to the value of  
3       these assets. And for that reason, I'm accepting it for the  
4       limited purpose described by Mr. Hume.

5       (Internal JPMorgan e-mail and attachment were hereby received  
6       in evidence for limited purpose as BCI's Exhibit BCI-1005, as  
7       of this date.)

8                  MS. SCHAFFER: Thank you.

9                  MR. HUME: Your Honor, that leaves six exhibits that  
10       we've marked that are excerpts from the examiner's report in  
11       this case. They relate to things that you've heard about in  
12       trial testimony such as the use of the GFS system and its  
13       reliability on September 12th; whether it contained all the  
14       securities transferred to Barclays; some of the negotiations  
15       and the examiner's discussion of the negotiations of the sale  
16       transaction.

17                  We note, of course, that the examiner was very clear  
18       to say that he was making no findings on the matters in dispute  
19       in this case. We don't submit the examiner's report excerpts  
20       as findings of fact relating to matters in dispute, but simply  
21       for the limited purpose of showing what the examiner reported  
22       to the Court on some of the subsidiary fact issues that have  
23       come up in the case.

24                  There are six exhibits that we've identified  
25       previously. I think there may be some other limited excerpts

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1 we have used from time to time, at least two, one relating to  
2 the valuation of Pine, and another relating to the discussion  
3 of Archstone which was a borrower of Pine. We haven't  
4 identified those as exhibits yet, so we may be too late to do  
5 so. But depending on movants' counsel's reaction to the  
6 limited purpose of admission, we would ask that those be  
7 considered as well.

8 I think that's all we have to say about the examiner's  
9 report. And maybe we can allow movants' counsel to respond.

10 MS. SCHAFFER: Again, for the record, Tracy Schaffer.

11 Movants believe that all of the examiner's reports  
12 excerpts, including the ones -- the two additional ones just  
13 mentioned, are classic hearsay. With all due respect to the  
14 examiner, the report was based on interviews conducted --  
15 interview memos drafted, none of which had been made available.  
16 The witnesses who were interviewed were not deposed. The  
17 interviews were not conducted under oath. And many of the  
18 individuals were not deposed in this matter, and we think that  
19 it's hearsay and that the case law is very clear on this point.

20 And I actually have a stack of manageable size  
21 cases -- about four cases that hold that an examiner's report  
22 is hearsay and not evidence. We're happy to give that to Your  
23 Honor. We can put it in a short letter brief as well.

24 THE COURT: I have no doubt that it's hearsay. I  
25 agree with you. The question is whether or not it can be

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1 admitted for a limited purpose. And maybe I need to better  
2 understand what we're talking about in terms of these excerpts  
3 and the purpose for which the offer is being made and what  
4 evidentiary value these excerpts have for purposes of matters  
5 under dispute here.

6 Can I have a little bit more from Mr. Hume on this? I  
7 agree that it's hearsay. The question is whether or not I can  
8 consider the excerpts for a limited purpose.

9 MR. HUME: It may be useful first for me to say that  
10 while it's hearsay in the sense that it's a document in a  
11 report, the examiner was reporting pursuant a statutory  
12 authority and was under a duty to make this report.

13 THE COURT: Absolutely. And I've read the report and  
14 I consider the report to be extremely well done, to be a very  
15 professional piece of work; perhaps the finest example I've  
16 ever seen of an examiner's report. And I believe that the  
17 information in the report is extremely useful and also  
18 reliable.

19 MR. HUME: As --

20 THE COURT: But that doesn't mean that it isn't  
21 hearsay.

22 MR. HUME: -- well, it may mean, under 803(8) that  
23 it's a public -- an official document pursuant to a statutory  
24 duty.

25 THE COURT: I don't think it's like a mortgage. I

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1 think it probably doesn't fit that, although I'm going to give  
2 you the ability to argue.

3 MR. HUME: What I would like to do, Your Honor, if we  
4 could look at 803(8), we have that. And then could I have  
5 those two excerpts up?

6 Your Honor, 803(8) provides that the hearsay rule does  
7 not apply to reports -- would you highlight "reports" please?  
8 I don't have my pointer today -- reports, in any form, of  
9 public offices or agencies, setting forth ... (B)" -- if you  
10 could -- "(B) matters observed pursuant to duty imposed by law  
11 as to which matters there was a duty to report." I don't think  
12 you need the next part. And similarly, (C) in civil actions,  
13 factual findings resulting from an investigation made pursuant  
14 to authority granted by law.

15 I would submit, Your Honor, that the highlighted  
16 portions of 803(8) on the screen provide support for a finding  
17 that the examiner's report falls under that exception.

18 I suppose there's a question of whether the examiner  
19 is a public office or agency. The argument we would make is  
20 that by being appointed by the Court as an independent party  
21 and an officer of the Court, not representing any private  
22 interest, only representing the public interest, the examiner  
23 should be considered akin to a public office or agency for  
24 purposes of this rule.

25 Now, in terms of the limited purpose and evidentiary

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1 value of what is in the examiner's report, I'd like to first  
2 start with BCI Exhibit 976, which is at tab 5 of the binder,  
3 which is a lengthy excerpt, but explains -- if we go to the  
4 second page on 2117, how on September 14th -- in the second  
5 paragraph -- Federal Reserve Bank of New York expanded the  
6 categories of collateral accepted through its primary dealer  
7 credit facility, and that previously, it had only accepted  
8 investment-grade securities, on September 15th it announced it  
9 would accept any collateral.

10 This is relevant to the issue of the nature of the  
11 collateral that had become acceptable in these repos as the  
12 financial prices worsened, and the Fed's recognition that to  
13 keep the system afloat, it was going to take illiquid security.  
14 And of course, as Professor Pfleiderer explained, over half the  
15 securities that came over to Barclays in the Fed replacement  
16 transaction were illiquid.

17 So we would think this is simply limited-purpose  
18 evidence that can help support the complete picture and context  
19 of the facts relevant to this case. This doesn't go to an  
20 ultimate issue directly. But it does help thaw out interdittal  
21 (ph.) facts that are relevant to understanding the case.

22 If we could look at BCI Exhibit 997 at tab 6 of the  
23 binder, there is a discussion in that excerpt, beginning on  
24 2006, of the examiner's use of GFS. The first sentence there:  
25 "The examiner's financial advisors used GFS as their primary

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1 source for information," here it's talking about the LBHI  
2 affiliate entities' securities, but that includes LBI. And I  
3 think the discussion goes on to explain in detail, if you go  
4 down the paragraph, a little bit, to the sentence, "The  
5 examiner used the September 12, 2008 dataset to perform the  
6 securities analyses presented herein," and that he selected the  
7 September 12 dataset after all of these extensive interviews  
8 with Lehman, Barclays and Alvarez employees.

9 So he goes on, in this discussion to discuss his  
10 assessment of GFS, his analysis of whether the securities  
11 transferred to Barclays were in GFS, whether any of them  
12 belonged to Lehman affiliates. And as Your Honor knows, he  
13 concluded that none of them did, they all belonged to LBI, I  
14 believe is his finding.

15 So again, there's been some disputes about what GFS  
16 does and doesn't contain. I believe there's an excerpt  
17 somewhere in here, in one of our excerpts, saying that the  
18 examiner carefully performed a lot of analyses to determine  
19 what was there. Sometimes they're listed by CUSIP, sometimes  
20 by ISIN number. And after that analysis, he concluded that all  
21 but 0.5 percent of the value of Schedule A and B was found on  
22 GFS.

23 Again, I'm saying that from memory. But I showed that  
24 excerpt to Professor Pfleiderer during his examination. And so  
25 again, it's an example of a subsidiary fact that is relevant to

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1 show context, relevant to some of the facts in dispute.

2 So we offer -- and there may be a completeness  
3 objection. And we have excerpts -- to be honest, Your Honor,  
4 as I look through the first four tabs, that seem even  
5 incomplete as excerpts. I'm not quite sure whether they are  
6 complete excerpts we made. But if there's a completeness  
7 objection, we would not object to the examiner report coming in  
8 as a whole for a limited purpose of showing what was reported,  
9 to the extent that it is relevant to any factual findings that  
10 the Court's being asked to resolve. We're not asking the Court  
11 to adopt it as findings. There are things in there that I  
12 think both parties likely disagree with in terms of the  
13 examiner's report, for the reasons mentioned by Lehman's  
14 counsel. But it does have some relevant information provided  
15 from his extensive work.

16 THE COURT: Okay.

17 MS. SCHAFER: First, just to respond to Mr. Hume's  
18 argument that the examiner excerpts somehow fall into the  
19 hearsay objection (sic), I've got a case which I'll just read  
20 one paragraph from that's particularly responsive to that  
21 point. And it is in the case of Monus v. Antonucci, it's in  
22 the Northern District of Ohio, and the cite is 1995 WL 469694.  
23 And in that case one of the parties sought to admit an  
24 examiner's report.

25 And the Court noted that the examiner's -- excluding

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1 the examiner's report, held it was not evidence, and noted  
2 that, "The examiner's report consists of 1,000 pages relying on  
3 sworn and unsworn testimony and statements by individuals, some  
4 of whose identities are not revealed, and a variety of  
5 documents, the authenticity of which may be subject to  
6 challenge under the Federal Rules of Evidence. It is doubtful  
7 that the examiner's report is one of those public records or  
8 reports which the drafters of the Federal Rules of Evidence had  
9 in mind in creating the Rule 803(8), which is the public  
10 records exception to hearsay." And the examiner's report was  
11 excluded.

12 In terms of the particular -- and I think there's  
13 about eight to ten excerpts that Barclays wants admitted. Mr.  
14 Hume just gave us two examples. He didn't go through all of  
15 them. I'm not sure what the limited purposes are for the other  
16 ones. Those have not been disclosed to us. But in terms of  
17 the two exhibits that he did speak about, I think they're still  
18 seeking to admit them for the truth of the matter.

19 THE COURT: They're still what?

20 MS. SCHAFER: Seeking to admit them for the truth of  
21 the matter, and I think that they're hearsay. He may have  
22 narrowed it down to the particular paragraph within the  
23 excerpt, but they're still for the truth of the matter, and  
24 they should be excluded as hearsay. Unless Your Honor has  
25 questions --

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1                   THE COURT: Mr. Hume, just so I'm clear on the offer,  
2                   is the offer for a limited purpose as it relates to all  
3                   excerpts?

4                   MR. HUME: Yes, Your Honor.

5                   THE COURT: I'm not suggesting that we need to burden  
6                   today's hearing with a review of each of the other excerpts,  
7                   but are the other excerpts of the same sort as we've seen or  
8                   are they of a different type?

9                   MR. HUME: No, I think they're the same sort. I mean,  
10                  I've tried to recall what I think has been most important that  
11                  we've shown from the examiner's report: what he said about the  
12                  GFS system, what he said about JPMorgan's valuations of  
13                  collateral, including Pine, and the doubts about that  
14                  collateral; and to a limited extent, some of his discussions of  
15                  the Barclays-Lehman sale negotiations being conducted in good  
16                  faith, at least as far as he found.

17                  THE COURT: Okay. I'm going to exclude all of the  
18                  excerpts from the examiner's report as evidence for all  
19                  purposes. My reasoning is as follows.

20                  I've already read the examiner's report. And it's  
21                  voluminous, and I can't say that I have total recall of the  
22                  excerpts that you're most concerned with. But I viewed the  
23                  examiner's report as a guide to the Court and to parties-in-  
24                  interest as to events that are circumscribed by an order that I  
25                  issued directing the appointment of the examiner and providing

1 for the scope of the examiner's work.

2 To that extent, I believe that Rule 803(8) does not,  
3 by its literal reading, apply to this report. And I don't mean  
4 to be overly constrained in my reading of the rule, nor do I  
5 mean by this ruling to limit my ability to consider the  
6 application of this rule in other settings that may be  
7 comparable. But I don't believe that the examiner was  
8 appointed pursuant to any duty imposed by law, as much as he  
9 was appointed pursuant to a carefully negotiated order that was  
10 drafted by parties-in-interest, for my approval. And I think  
11 as a result, that his work does not neatly fit within the  
12 public records and reports exception to the hearsay rule.

13 Additionally, I know from my review of the report,  
14 which I consider a reliable report, that it was based to a very  
15 large extent upon a series of interviews with third parties,  
16 many of whom were identified. There are extensive footnotes in  
17 the report, and it's very well-documented, but it's not  
18 entirely clear to the reader that every conclusion reached in  
19 the report is traceable to particular statements made by these  
20 third parties. And even if they were traceable to such  
21 statements, the statements would be hearsay.

22 More to the point, Mr. Valukas was very deliberate in  
23 his efforts not to in any way intrude upon the fact-finding  
24 process that the Court is currently engaged in, in respect of  
25 the present 60(b) dispute. And I think it unwise for me to

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1 admit the excerpts for any purpose, in part for that reason,  
2 but also because I doubt that there is any meaningful probative  
3 value that I can derive from these excerpts, since I rather  
4 expect that in the course of the months of hearings that we've  
5 had in this Court, that I have been exposed to more direct and  
6 unvarnished evidence than Mr. Valukas could possibly have  
7 encountered during the course of his work.

8 So for these reasons, I believe that I have ample  
9 evidence in the record to make my own conclusions concerning  
10 the reliability of the GFS system and any other matters that he  
11 may be describing in his report. I don't need these excerpts.  
12 I recognize that they may be valuable extras, but I view this  
13 as gilding the lily at this point. So I'm excluding those  
14 excerpts.

15 MR. SCHILLER: Your Honor, that concludes what we have  
16 for Your Honor today, other than our request for a brief  
17 conference with Your Honor.

18 THE COURT: All right. Let's do the following, I  
19 know that there are some people in court who shouldn't be  
20 present for a chambers conference. And we have, I think, a  
21 small enough group gathered here today that we can comfortably  
22 do this in Room 608, assuming that room is available to us, and  
23 I expect it is.

24 So, I'm going to have my courtroom deputy check on the  
25 availability of that room. If that room is available, we'll

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1 meet there in about five or ten minutes. If for some reason  
2 that room is not available, we'll meet here in the courtroom,  
3 having first cleared the courtroom of those people who  
4 shouldn't be present for the chambers conference.

5 And we're adjourned until Thursday morning.

6 (Whereupon these proceedings were concluded at 2:39 p.m.)

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Page 26

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2 I N D E X

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4 E X H I B I T S

5	OTHER'S	DESCRIPTION	PAGE
6	BCI-1106	Deposition exhibit	8
7	BCI-1107	Deposition exhibit	8
8	BCI-1005	Internal JPMorgan	14 (limited purpose)
9		e-mail and	
10		attachment	

11

12 RULINGS

13	Page	Line
14	All excerpts of the	22 17
15	examiner's report will	
16	be excluded as evidence	

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Page 27

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2 C E R T I F I C A T I O N

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4 I, Penina Wolicki, certify that the foregoing transcript is a  
5 true and accurate record of the proceedings.

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9 \_\_\_\_\_  
PENINA WOLICKI

10

11 Veritext

12 200 Old Country Road

13 Suite 580

14 Mineola, NY 11501

15

16 Date: October 19, 2010

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